

HOUSE BILL 243
By DuBois

AN ACT to amend Tennessee Code Annotated, Title 49,
Chapter 10, Part 6, relative to special education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 10, Part 6, is amended by
adding the following as a new appropriately designated section:

49-10-603.

(a) Notwithstanding the provisions of Section 49-10-601, a child, or such child's
parent or guardian who is party to a due process hearing pursuant to this chapter shall
be entitled to :

(1) Be accompanied and advised by counsel and by individuals with
special knowledge or training with respect to the problems of children with
disabilities;

(2) Present evidence and confront, cross-examine, and compel the
attendance of witnesses:

(A) Requests for the attendance of witnesses shall be made to
the director of the LEA or such director's designated representative who
shall inform the hearing officer of the request;

(B) Subpoenas to compel the attendance of witnesses and the
production of documentary evidence shall be issued by the hearing
officer; and

(C) LEA's shall ensure the availability of all LEA employees called
as witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic verbatim record of the hearing;

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions;

(6) Obtain additional disclosure information:

(A) At least five (5) business days prior to a due process hearing each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the due process hearing;

(B) A hearing officer may bar any party that fails to comply with (a)(6)(A) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party;

(7) Have the child who is the subject of the hearing present;

(8) Have the hearing open to the public; and

(9) Have the record of the hearing and the findings of fact and decisions provided at no cost.

(b) Findings of fact and the final decision of the hearing officer shall be made to the division of special education of the Tennessee department of education, the advisory council for students with disabilities, and to the public after deleting any personally identifiable information.

(c) A decision made in a due process hearing is final, except that any party involved in the hearing has the right to bring a civil action with respect to the complaint.

(d)

(1) The division of special education of the Tennessee department of education shall ensure that not later than forty-five (45) days after the receipt of a request for a hearing that a final decision is reached in the hearing. A copy of the decision shall be mailed to the LEA, the parents and the division of special education.

(2) A hearing officer may grant specific extensions of time beyond forty-five (45) days at the request of either party.

(3) Each hearing and each review involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents of the child involved.

(4) Unless a decision is rendered within forty-five (45) days after the receipt of a request for a hearing, the hearing officer will not be reimbursed, except in extraordinary circumstances as determined by the commissioner. Additionally, if no decision has been rendered within forty-five (45) days after the receipt of a request for a hearing, the party requesting the hearing shall be given the following options:

(A) A new hearing conducted by a different hearing officer; or

(B) A different hearing officer to review the existing transcript and evidence, and render a decision on the record.

(e)

(1) A hearing shall not be conducted by a person who is an employee of the state agency or the LEA that is involved in the education or care of the child, or any person having a personal or professional interest that would conflict with such person's objectivity in the hearing.

(2) A person who otherwise qualifies to conduct a hearing is not an employee of the division of special education of the Tennessee department of education solely because such person is paid by the department to serve as a hearing officer.

(3) The Tennessee department of education shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(4) All hearing officers shall be trained in the following areas:

(A) State and federal special education laws and regulations;

(B) The uniform administrative procedures act;

(C) Clear writing and proper grammatical form;

(D) Conducting hearings in an orderly and controlled manner;

(E) Rendering decisions in an impartial manner, extracting pertinent data from a variety of sources, and arriving at an appropriate decision;

(F) The nature of physical and mental impairments and special education programming;

(G) Diagnostic instruments and procedures; and

(H) A professional demeanor and objectivity.

(f)

(1) Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with Tennessee Code Annotated, section 4-5-322 and section 49-10-601 or in a district court of the United States without regard to the amount in controversy.

(2) In any action brought under (f)(3) of this section, the court: shall:

(A) Receive the records of the administrative proceedings;

(B) Hear additional evidence at the request of a party; and

(C) Basing its decision on the preponderance of the evidence,

grant the relief that the court determines to be appropriate.

(3) The district courts of the United States have jurisdiction of actions brought under Section 615 of the Individuals with Disabilities Act ("IDEA") without regard to the amount in controversy.

(4) Nothing in this section restricts or limits the rights, procedures, and remedies available under the United States Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the IDEA, the due process procedures must be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

(g)

(1) Any action or proceeding brought under Section 625 of the IDEA, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents of a child with a disability who is the prevailing party; and

(2) Funds under IDEA part b may not be used to pay attorney's fees or costs of a party related to an action or proceeding under Section 315 of the IDEA. This does not preclude a LEA from using funds under IDEA part b for conducting an action or proceeding under Section 615 of the IDEA.

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.